

EXPLANATORY STATEMENT

Issued by the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by legislative instrument, determine that a health service not specified in an item in the general medical services table (the Table) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the Table.

The Table is set out in the regulations made under subsection 4(1) of the Act. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2019*.

Purpose

On 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive \$2.4 billion health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Aboriginal and Torres Strait Islander communities, from the coronavirus (COVID-19).

As part of the package, the Government announced \$100 million to fund new Medicare services for people in home isolation or quarantine, as a result of COVID-19, to receive health consultations remotely.

Stage One of the Government's response commenced on 13 March 2020 by introducing new telehealth consultation services to provide services remotely to patients who have been diagnosed with the COVID-19 virus, or who are vulnerable of contracting the COVID-19 virus. These services can be provided by general practitioner (GPs), other doctors in general practice, nurse practitioners, mental health allied health workers, specialists, consultant physicians and consultant psychiatrists.

Stage Two commenced on 16 March 2018 to expand the telehealth items to midwives, obstetricians and to recognise a GP for continuity of care practices (rather than an individual GP).

Stage Three commenced on 23 March 2020 to allow all vulnerable general practitioners and other vulnerable health professionals who are currently authorised to use telehealth item numbers, to use telehealth for all consultations with all their patients.

Stage Four commences on 30 March 2020, to enable all Australians with or without COVID-19 to access relevant telephone and phone consultation services. All patients will be required to be bulk-billed.

Under Stage Four, new telehealth and phone consultations items will be listed for the following services:

- the provision of health assessments; GP management plans, team care arrangements and multidisciplinary care plans;
- GP pregnancy support counselling services;
- the assessment and diagnosis for children with autism or another pervasive development disorder;
- GP mental health treatment plans;
- eating disorder treatment and management plans that can be provided by either a GP, or a consultant physician or psychiatrist;
- the preparation of an eating disorder treatment plan and the review of an eating disorder treatment plan;
- the provision of an eating disorder psychological treatment service that can be provided by a general practitioner; and
- urgent after hours services in unsociable hours, which can be provided by general practitioners or another medical practitioner in general practice.

Stage Four will also expand the provision of telehealth and phone services to enable allied health professionals to provide the following services:

- psychological therapy services which can be rendered by eligible clinical psychologists;
- focussed psychological strategy services which can be rendered by eligible clinical psychologists, an occupational therapist, an eligible social worker;
- allied health services which can be rendered by an eligible allied health practitioner;
- pregnancy support counselling services, which can be rendered by an eligible psychologist, eligible social worker or eligible mental health nurse;
- psychological health service, which can be rendered by an eligible psychologist;
- speech pathology, occupational therapy, audiology, optometry, orthoptic or physiotherapy health services which can be rendered by an eligible speech pathologist, occupational therapist, audiologist, orthoptist or physiotherapist;
- telehealth attendance services for a person of Aboriginal and Torres Strait Islander descent, which can be rendered by an eligible allied health practitioner;
- eating disorder dietetics service, which can be rendered by an eligible dietitian; and
- eating disorder psychological treatment services which can be rendered by an eligible clinical psychologist, an eligible occupational therapist, and eligible social worker.

The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Determination) is to repeal the *Health Insurance (Section 3C General Medical Services - COVID-19 Services) Determination 2020* to amend the existing 92 items that currently prescribe the COVID-19 medical services to prescribe that all Australians can access these services, and to introduce the 130 new items for COVID-19 health services for all Australians.

Consultation

Consultation was undertaken with the Australian Medical Association, the Royal Australian College of General Practitioners, the Australian College of Rural and

Remote Medicine and the Rural Doctors Association of Australia on Stage Four of the Government's health care package to protect all Australians from the coronavirus (COVID-19). Stage 4 was broadly supported to further support Australians during the COVID-19 health emergency.

Details of the Determination are set out in the Attachment.

The Determination commences on 30 March 2020 and will cease on 30 September 2020.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority: Subsection 3C(1) of the
Health Insurance Act 1973

Details of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020*.

Section 2 – Commencement

Section 2 provides for the Determination to commence on 30 March 2020.

Section 3 – Authority

Section 3 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 4 – Cessation

Section 4 provides that the Determination will cease on 30 September 2020, unless earlier revoked.

Section 5 – Definitions

Section 5 defines terms used in the Determination.

Section 6 – Schedules

Section 6 provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

Section 7 – Treatment of relevant services

Section 7 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a medical service and as if there were an item specified in the Table for the service.

Part 2 – Application of items

Section 8 – Application of items – general

Section 8 of Part 2 applies general application provisions.

Subsection 8(1) requires that a service in the Determination does not apply if the patient is an “admitted patient”, as defined in section 4.

Subsection 8(2) provides that the specialist, consultant physician and consultant psychiatrist items in Schedule 2 (other than items 91850, 91853, 91855 and 91857) shall be treated as if they were specified in clause 1.2.2 of the general medical services table. Clause 1.2.2 provides that the specified items do not apply if the patient does not have a referral within the period of validity.

Subsection 8(3) provides that a patient cannot access the COVID-19 general practice focussed psychological strategy services (items Subgroup 3 or 10 of Group A40) or the allied mental health treatment items (Subgroups 1 to 4, 6 to 9 of Group M18) if they have accessed more than 10 services through the Medicare Benefits Schedule Better Access initiative in a calendar year.

Subsection 8(4) provides that the service can only be performed if the service is “bulk-billed”, as defined in section 4.

Subsection 8(5) provides that the service can only be provided by a single practitioner on a single patient.

Schedule 1 – Relevant Services – GP and medical practitioner services

Schedule 1 prescribes the COVID-19 telehealth and phone consultation services provided by general practitioners (GPs) and other doctors in general practice. These services can be rendered to all Australians and must be bulk-billed.

Division 1.1 of Schedule 1

Subgroups 1 and 2 of Group A40 prescribe 24 equivalent Level A to D attendance items that can be provided remotely by a GP or another medical practitioner in general practice.

Items in subgroup 1 prescribe 12 equivalent Level A to D general practice attendance services by telehealth, which requires an audio and visual link. This includes:

- Items 91790, 91800, 91801 and 91802 rendered by GPs.
- Items 91792, 91803, 91804 and 91805 rendered by medical practitioners in metropolitan areas.
- Items 91794, 91806, 91807 and 91808 rendered by medical practitioners in “eligible areas”.

Items in subgroup 2 prescribe 12 equivalent Level A to D general practice attendance services by phone, which requires an audio link only. This includes:

- Items 91795, 91809, 91810 and 91811 rendered by GPs.
- Items 91797, 91812, 91813 and 91814 rendered by medical practitioners in metropolitan areas.
- Items 91799, 91815, 91816 and 91817 rendered by medical practitioners in “eligible areas”.

Subgroup 3 prescribes focussed psychological strategy services by telehealth that can be provided by a general practitioner (91818 and 91819) or a medical practitioner (91820 and 91821), which require an audio and visual link. Subgroup 10 prescribes the equivalent phone

services provided by a general practitioner (91842 and 91843) or a medical practitioner (91844 and 91845), which requires an audio link only.

Subgroups 11 prescribes health assessment attendance telehealth services for Aboriginal and Torres Strait Island people provided by a general practitioner (92004) or a medical practitioner (92011), which requires an audio and visual link. Subgroup 12 prescribes the equivalent phone services provided by a general practitioner (92016) or a medical practitioner (92023), which requires an audio link only.

Subgroups 13 prescribes 20 telehealth items for the development, coordination or review of a GP management plans, the coordination of team care arrangements or a multidisciplinary care plans. These services require an audio or visual link and can be provided by a general practitioner (92024, 92025, 92026, 92027 and 92028) or a medical practitioner (92055, 92056, 92057 and 92058, 92059). Subgroup 14 prescribes the equivalent phone services provided by a general practitioner (92068, 92069, 92070, 92071 and 92072) or a medical practitioner (92099, 92100, 92101, 92102 and 92103).

Subgroups 15 prescribes GP pregnancy support counselling services by telehealth that can be provided by a general practitioner (92136) or a medical practitioner (92137) which require an audio and visual link. Subgroup 16 prescribes the equivalent phone services provided by a general practitioner (92138) or a medical practitioner (92139).

Subgroups 17 prescribes a telehealth attendance for the treatment and management plan for a patient under 13 years of age and who has an eligible disability (92142), which can be provided by a general practitioner. Subgroup 18 prescribes the equivalent phone service (92145).

Subgroups 19 prescribes GP mental health treatment plan services by telehealth, which can be provided by a general practitioner (92112, 92113, 92114, 92115, 92116, 92117) or a medical practitioner (92118, 92119, 92120, 92121, 92122 and 92123). Subgroup 20 prescribes the equivalent phone services provided by a general practitioner (92124, 92125, 92126, 92127, 92128 and 92129) or a medical practitioner (92130, 92131, 92132, 92133, 92134 and 92135).

Subgroup 21 prescribes telehealth attendance services for the preparation of written eating disorder treatment and management plan, which can be provided by a general practitioner (92146, 92147, 92148, 92149) or a medical practitioner (92150, 92151, 92152 and 92153). Subgroup 22 prescribes the equivalent phone services provided by a general practitioner (92154, 92155, 92156 and 92157) or a medical practitioner (92158, 92159, 92160 and 92161).

Subgroup 25 prescribes telehealth attendance services for the review of an eating disorder plan, which can be provided by a general practitioner (92170) or a medical practitioner (92171). Subgroup 26 prescribes the equivalent phone services provided by a general practitioner (92176) or a medical practitioner (92177).

Subgroups 27 prescribes a telehealth attendance for the provision of an eating disorder psychological treatment service, which can be provided by a general practitioner (92182 and 92184) or a medical practitioner (92186 and 92188). Subgroup 28 prescribes the equivalent phone services provided by a general practitioner (92194 and 92196) or a medical practitioner (92198 and 92200).

Subgroup 29 prescribes a telehealth urgent after hours attendance services which can be provide by a general practitioner (92210) or a medical practitioner (92211). Subgroup 30 prescribes the equivalent phone services provided by a general practitioner (92216) or a medical practitioner (92217).

Schedule 2 – Specialist, consultant physician and consultant psychiatrist services

Schedule 2 prescribes the COVID-19 telehealth and phone consultation services provided by specialists, consultant physicians and consultant psychiatrists. These services can be rendered to all Australians and must be bulk-billed.

Division 2.1 of Schedule 2

Subgroup 4 of Group A40 prescribes two equivalent initial and subsequent specialist attendance services by telehealth (91822 and 91823), which requires an audio and visual link. Subgroup 7 prescribes the equivalent phone services, which requires an audio link only (91832 and 91833).

Subgroup 5 prescribes three equivalent initial, subsequent and minor consultant physician attendance services by telehealth (91824, 91825 and 91826), which requires an audio and visual link. Subgroup 8 prescribes the equivalent phone services (91834, 91835 and 91836), which requires an audio link only.

Subgroup 6 prescribes five equivalent consultant psychiatry attendance services by telehealth (91827, 91828, 91829, 91830 and 91831), which requires an audio and visual link. Subgroup 9 prescribes the equivalent phone services (91837, 91838, 91839, 91840 and 91841), which requires an audio link only.

Subgroup 17 prescribes two telehealth services for the assessment and diagnosis for children with autism or another pervasive development disorder (92140 and 92141), which requires an audio and visual link. Subgroup 18 prescribes the equivalent phone services (92143 and 92144), which requires an audio link only.

Subgroup 23 prescribes two telehealth services for the preparation of an eating disorder treatment plan (92162 and 92163), which requires an audio and visual link. Subgroup 24 prescribes the equivalent phone services (92166 and 92167), which requires an audio link only.

Subgroup 26 prescribes two phone services for the review of an eating disorder plan by an eligible psychiatrist (92178 and 92179), which requires an audio link only.

Division 2.2 of Schedule 2

Subgroup 1 of Group T4 prescribes four equivalent postnatal attendance services by telehealth (91850, 91851, 91853 and 91853) which requires an audio and visual link. Subgroup 2 of Group T4 prescribes the equivalent phone services (91855, 91856, 91857 and 91858), which requires an audio link only.

Division 3.1.1 of Schedule 3

Division 3.1.1 of Schedule 3 prescribes equivalent health treatment attendance items that can be performed by certain allied health providers by telehealth, which requires an audio and visual link.

Subgroup 1 of Group M18 prescribes two psychological therapies services by telehealth (91166 and 91167), which requires an audio and visual link. Subgroup 6 of Group M18 prescribes the

equivalent phone services (91181 and 91182), which requires an audio link only. These services can be provided by an eligible clinical psychologist.

Subgroup 2 of Group M18 prescribes two focussed psychological strategies services by telehealth (91169 and 91170), which requires an audio and visual link. Subgroup 7 of Group M18 prescribes the equivalent phone services (91183 and 91184), which requires an audio link only. These services can be provided an eligible clinical psychologist.

Subgroup 3 of Group M18 prescribes two focussed psychological strategies services by telehealth (91172 and 91173), which requires an audio and visual link. Subgroup 8 of Group M18 prescribes the equivalent phone services (91185 and 91186), which requires an audio link only. These services can be provided an eligible occupational therapist.

Subgroup 4 of Group M18 prescribes two focussed psychological strategies services by telehealth (91175 and 91176), which requires an audio and visual link. Subgroup 9 of Group M18 prescribes the equivalent phone services (91187 and 91188), which requires an audio link only. These services can be provided an eligible social worker.

Subgroup 11 of Group M18 provides a telehealth attendance service (93000), which requires an audio and visual link. Subgroup 12 of Group M18 prescribes the equivalent phone service (93013), which requires an audio link only. These services can be provided by an eligible allied health practitioner.

Subgroup 13 of Group M18 provides a pregnancy support counselling services by telehealth (93026) which requires an audio and visual link. Subgroup 14 of Group M18 prescribes the equivalent phone service (93029), which requires an audio link only. These services can be provided by an eligible psychologist, eligible social worker or eligible mental health nurse.

Subgroup 15 of Group M18 provides psychological health service for a child by telehealth (93032 and 93035), which requires an audio and visual link. Subgroup 16 of Group M18 prescribes the equivalent phone services (93040 and 93043), which requires an audio link only. These services can be provided by an eligible psychologist.

Subgroup 15 also provides speech pathology, occupational therapy, audiology, optometry, orthoptic or physiotherapy health service by telehealth (93033 and 93036), which requires an audio and visual link. Subgroup 16 of Group M18 also prescribes the equivalent phone services (93041 and 93044), which requires an audio link only. These services can be provided by an eligible speech pathologist, occupational therapist, audiologist, orthoptist or physiotherapist.

Subgroup 17 of Group M18 provides a telehealth attendance services for a person of Aboriginal and Torres Strait Islander descent (93048), which requires an audio and visual link. Subgroup 18 of Group M18 prescribes the equivalent phone service (93061), which requires an audio link only. These services can be provided by an eligible allied health practitioner.

Subgroup 19 of Group M18 provides an eating disorder dietetics service by telehealth (93074), which requires an audio and visual link. Subgroup 21 prescribes the equivalent phone service (93108), which requires an audio link only. These services can be provided by an eligible dietitian.

Subgroup 20 of Group M18 provides eight eating disorder psychological treatment services by telehealth (93076, 93079, 93084, 93087, 93092, 93095, 93100 and 93103), which requires an audio and visual link. These services can be provided by an eligible clinical psychologist (93076, 93079, 93084 and 93087), an eligible occupational therapist (93092 and 93095), and eligible social worker (93100 and 93103). Subgroup 22 prescribes the equivalent phone service which can be provided by an eligible clinical psychologist (93110 and 93113), an eligible psychologist (93118 and 93121), an eligible occupational therapist (93126 and 93129) or an eligible social worker (93134 and 93137).

Schedule 4 – Nurse practitioner and midwife services

Schedule 4 of the Determination prescribes the COVID-19 telehealth and phone consultation services provided by nurse practitioners and midwives. These services can be rendered to all Australians and must be bulk-billed.

Division 4.1 of Schedule 4

Subgroup 5 of Group M18 prescribes four equivalent Level A to D participating nurse practitioner attendance services by telehealth (items 91192, 91178, 91179 and 91180), which requires an audio and visual link. Subgroup 10 of Group M18 prescribes the equivalent phone services (91193, 91189, 91190 and 91191), which requires an audio link only.

Division 4.2 of Schedule 4

Subgroup 1 of Group M19 prescribes four antenatal services by telehealth (91211, 91212, 91214 and 91215), which requires an audio and visual link. Subgroup 2 of Group M19 prescribes the equivalent phone services (91218, 91219, 91221 and 91222) which requires an audio link only.

Schedule 4 – Repeals

Schedule 4 repeals the *Health Insurance (Section 3C General Medical Services - COVID-19 Services) Determination 2020*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Health Insurance (Section 3C General Medical Services – Expanded Telehealth and Telephone Attendances) Determination 2020

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

On 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive \$2.4 billion health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Aboriginal and Torres Strait Islander communities, from the coronavirus (COVID-19).

As part of the package, the Government announced \$100 million to fund new Medicare services for people in home isolation or quarantine, as a result of COVID-19, to receive health consultations remotely.

Stage One of the Government's response commenced on 13 March 2020 by introducing new telehealth consultation services to provide services remotely to patients who have been diagnosed with the COVID-19 virus, or who are vulnerable of contracting the COVID-19 virus. These services can be provided by general practitioner (GPs), other doctors in general practice, nurse practitioners, mental health allied health workers, specialists, consultant physicians and consultant psychiatrists.

Stage Two commenced on 16 March 2018 to expand the telehealth items to midwives, obstetricians and to recognise a GP for continuity of care practices (rather than an individual GP).

Stage Three commenced on 23 March 2020 to allow all vulnerable general practitioners and other vulnerable health professionals who are currently authorised to use telehealth item numbers, to use telehealth for all consultations with all their patients.

Stage Four commences on 30 March 2020, to enable all Australians with or without COVID-19 to access relevant telephone and phone consultation services. All patients will be required to be bulk-billed.

Under Stage Four, new telehealth and phone consultations items will be listed for the following services:

- the provision of health assessments; GP management plans, team care arrangements and multidisciplinary care plans;
- GP pregnancy support counselling services;
- the assessment and diagnosis for children with autism or another pervasive development disorder;
- GP mental health treatment plans;

- eating disorder treatment and management plans that can be provided by either a GP, or a consultant physician or psychiatrist;
- the preparation of an eating disorder treatment plan and the review of an eating disorder treatment plan;
- the provision of an eating disorder psychological treatment service that can be provided by a general practitioner; and
- urgent after hours services in unsociable hours, which can be provided by general practitioners or another medical practitioner in general practice.

Stage Four will also expand the provision of telehealth and phone services to enable allied health professionals to provide the following services:

- psychological therapy services which can be rendered by eligible clinical psychologists;
- focussed psychological strategy services which can be rendered by eligible clinical psychologists, an occupational therapist, an eligible social worker;
- allied health services which can be rendered by an eligible allied health practitioner;
- pregnancy support counselling services, which can be rendered by an eligible psychologist, eligible social worker or eligible mental health nurse;
- psychological health service, which can be rendered by an eligible psychologist;
- speech pathology, occupational therapy, audiology, optometry, orthoptic or physiotherapy health services which can be rendered by an eligible speech pathologist, occupational therapist, audiologist, orthoptist or physiotherapist;
- telehealth attendance services for a person of Aboriginal and Torres Strait Islander descent, which can be rendered by an eligible allied health practitioner;
- eating disorder dietetics service, which can be rendered by an eligible dietitian; and
- eating disorder psychological treatment services which can be rendered by an eligible clinical psychologist, an eligible occupational therapist, and eligible social worker.

The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Determination) is to repeal the *Health Insurance (Section 3C General Medical Services - COVID-19 Services) Determination 2020* to amend the existing 92 items that currently prescribe the COVID-19 medical services to prescribe that all Australians can access these services, and to introduce the 130 new items for COVID-19 health services for all Australians.

Human rights implications

This instrument engages Articles 9 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the *'highest attainable standard of health'* takes into account the country's available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

The Right to Social Security

The right to social security is contained in Article 9 of the ICESCR. It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

The Committee reports that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits, or of denying benefits to persons or groups previously entitled to them. However, it is legitimate for a Government to re-direct its limited resources in ways that it considers to be more effective at meeting the general health needs of all society, particularly the needs of the more disadvantaged members of society.

Analysis

This instrument advances the right to health and the right to social security by ensuring all Australians will be able to access services for COVID-19. This instrument also introduces 130 new items for COVID-19 health services for all Australians.

Conclusion

This instrument is compatible with human rights as it advances the right to health and the right to social security.

David Weiss
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